
FINAL RECOMMENDATIONS FOR THE CONSERVATORSHIP LICENSING PROPOSAL April 5, 2006

Recommendation of the Joint Committee on Boards, Commissions, and Consumer Protection (Joint Committee)

ISSUE #1. Should California establish a licensing program for conservators?

Recommendation: *It appears that there is sufficient consumer protection justification for this proposal and that this proposal meets the threshold for licensure (the potential for serious injury or death, or severe financial harm). While the issues extend well beyond licensing professional conservators, and includes Probate Court oversight, and a myriad of conservatorship practices, a significant part is establishing a licensing and regulatory system for professional conservators.*

Comments: The proposal before the Joint Committee for consideration creates a licensing and regulatory program for professional fiduciaries under a newly-created Board of Professional Fiduciaries (Board) in the Department of Consumer Affairs (DCA).

SB 1550's (Figueroa) proposal would enact the Profession Fiduciaries Act, which would require individuals acting or holding themselves out as professional fiduciaries (defined as a person who acts as a conservator, guardian, trustee, personal representative, agent under a durable power of attorney for health care, or agent under a durable power of attorney for finances, for two or more persons not related to the professional fiduciary or to each other), to meet educational and examination requirements, comply with a Code of Ethics, maintain a \$100,000 bond, file specified information, and become licensed by the board, unless they are licensed as an attorney. The bill would also require the board to investigate complaints against licensed conservators, and take disciplinary action against violations.

As conservators, professional fiduciaries serve one of the most vulnerable and rapidly growing segments of the state's population – the elderly. Professional fiduciaries must make a broad range of complex decisions that seriously affect conservatees, including where he or she lives, home care arrangements, major medical decisions, and control of all of the conservatee's financial matters such as bank accounts, investment and tax decisions. The conservatee may be unable to evaluate the competency or honesty of the conservator, the quality of the care received, or articulate concerns regarding his or her care.

In recent years, legislation has been enacted in response to reports of widespread financial fraud and abuse of elderly and dependent adults by their conservators or guardians. In 1999, AB 925

(Hertzberg, Chapter 409) required all private professional conservators and guardians to register in a Statewide Registry maintained by the Department of Justice. AB 925 also anticipated the fact that as baby boomers age, certain ones may become incapable of taking care of themselves, and the number of conservatorship cases will increase, and a central Registry of conservators, guardians and trustees will be essential to keep track of how conservators manage these cases.

However, problems with conservators and guardians continue to persist. In November 2005, a series of articles in the *Los Angeles Times*, further highlighted issues of inequities and abuses in conservatorships as well as deficiencies in the oversight of conservators in the state. The articles raised issues with private professional conservators, public conservators, and with court oversight of conservatorships. In December 2005, the Joint Committee conducted a sunrise hearing to seek input regarding problems which may exist in California's system of conservatorship and solutions which protect those vulnerable citizens under conservatorship.

That hearing revealed testimony of numerous deficiencies and shortcomings in the current oversight and approach to conservatorships. While a number of the issues and solutions are outside the purview of the Joint Committee, clear evidence was presented to demonstrate the need for greater regulation of professional conservators. As a result of that hearing, SB 1550 (Figueroa) was drafted, and is now before the Joint Committee for recommendation.

Ultimate solutions for California's conservatorship system will, in addition to SB 1550, likely include Probate Court oversight and resources, restrictions, transparency and consistency in the operations of conservators, and appropriate limitations on granting emergency conservatorships. These issues are the focus of other legislative proposals during this session.